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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICH ROBINSON and ERIC C. ANDERSON

Appeal 2009-004585
Application 09/728,785¹
Technology Center 2100

Before HOWARD B. BLANKENSHIP, JAY P. LUCAS, and
JAMES R. HUGHES, *Administrative Patent Judges*.

LUCAS, *Administrative Patent Judge*.

DECISION ON APPEAL²

¹ Application filed November 30, 2000. The real party in interest is FotoMedia Technologies, LLC.

² The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellants appeal from a final rejection of claims 1 to 32 under authority of 35 U.S.C. § 134(a). The Board of Patent Appeals and Interferences (BPAI) has jurisdiction under 35 U.S.C. § 6(b).

We affirm the rejections.

Appellants' invention relates to a method for customizing tags within digital images captured with a camera. (*See* Spec. 4, ll. 7-8.) In the words of Appellants:

By allowing multiple developers to store metadata defining custom tags for different camera applications on [a] gateway server, such that images uploaded to the gateway server are automatically recognized by the key IDs, the metadata Internet platform eliminates the need for developers to write their own web applications to recognize the custom tags. In addition, the key IDs give the same gateway server the ability to recognize and extract custom data from a plurality of different cameras and camera applications.

(Spec. 8, ll. 13-19).

Claim 1 is exemplary and is reproduced below:

1. A method for customizing tags in digital images captured with an image capture device that stores the digital images in image files, each image file including one or more images tags each having a corresponding first pre-defined function, the method comprising:

(a) storing a key ID and a definition on a server in a network, the definition for altering the

corresponding first pre-defined function of at least one of the one or more image tags to create one or more custom tags for one or more of the image files, each custom tag having a second function that is different from the corresponding first pre-defined function;

- (b) receiving a plurality of the image files at the server over the network, wherein each of the image files includes image data, the key ID, and the one or more custom tags containing data; and
- (c) automatically recognizing the image files by the key ID and using the corresponding stored definition to extract the data from the one or more custom tags to make the data available to a user along with the image data.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Pavley	US 6,445,460 B1	Sep. 03, 2002 (filed on Apr. 13, 1999)
Gao	US 6,581,094 B1	Jun. 17, 2003 (filed on Nov. 02, 1999)
Manolis	US 6,583,799 B1	Jun. 24, 2003 (filed on Nov. 29, 1999)

REJECTIONS

The Examiner rejects the claims as follows:

R1: Claims 1, 7 to 10, 16, and 22 to 24 stand rejected under 35 U.S.C. § 102(e) for being anticipated by Pavley.

R2: Claims 2, 3, 11, 12, 17, 18 and 25 to 29 stand rejected under 35 U.S.C. § 103(a) for being obvious over Pavley in view of Gao.

R3: Claims 4 to 6, 13 to 15, 19 to 21 and 30 to 32 stand rejected under 35 U.S.C. § 103(a) for being obvious over Pavley and Gao in view of Manolis.

Appellants contend that Pavley does not anticipate the claimed subject matter, and that Pavley in combination with Gao and Manolis do not render the claimed subject matter unpatentable for failure of the references to teach the claim limitation “storing a key ID and a definition on a server in a network, the definition for altering the corresponding first pre-defined function of at least one of the one more image tags to create one or more custom tags for one or more of the image files, each custom tag having a second function that is different from the corresponding first pre-defined function” (claim 1) (Brief 18, top). The Examiner contends that each of the claims is properly rejected (Ans. 14, top).

We have only considered those arguments that Appellants actually raised in the Brief. Arguments that Appellants could have made but chose not to make in the Brief have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

ISSUE

The issue is whether Appellants have shown that the Examiner erred in rejecting the claims under 35 U.S.C. § 102(e) and 35 U.S.C. § 103(a). The issue turns on whether Pavley teaches “storing a key ID and a definition on a server in a network, the definition for altering the corresponding first pre-defined function of at least one of the one more image tags to create one or more custom tags for one or more of the image files, each custom tag

having a second function that is different from the corresponding first pre-defined function,” as recited in exemplary claim 1.

FINDINGS OF FACT

The record supports the following findings of fact (FF) by a preponderance of the evidence.

Disclosure

1. Appellants have invented a method, medium, and system of storing a customized tag within photos taken by a camera. (*See* claims 1, 10, 16, and 25; *see also* Spec. 4, ll. 7-8.) The claimed method includes storing a key ID and a definition on a server in a network (claim 1). Appellants’ definition, as claimed, is for altering the corresponding first pre-defined function of at least one of the one or more image tags to create one or more custom tags for one or more of the image files (*id.*). The claimed custom tag has a second function that differs from the corresponding first pre-defined function (*id.*). An example of a new function for customs tags, as recited in claim 1, is providing new uses for the tags (Spec. 2, l. 5).

Pavley

2. The Pavley reference teaches storing a category tag within photos taken by a camera (col. 5, ll. 14-24). Pavley’s method includes a key ID (*see* Fig. 3, “Image #314”) and a rule set (*see* col. 6, ll. 26-29) on a server in a network. (*See* col. 5, l. 52.) The patent teaches three types of functions (*i.e.*, an action that occurs based on a category tag): 1) detecting a person or groups of persons according to characteristics, like substantial amounts of flesh tones within the image; 2) detecting nature scenes from characteristics,

such as substantial green content in an image combined with a relative lack of hard edges; 3) and detecting categories such as city images, water images, or indoor images (col. 5, ll. 16-24). One rule set may be for altering the corresponding first pre-defined function (*e.g.*, *see* col. 5, ll. 15-18, detecting images containing a person or groups of people by recognizing substantial amounts of flesh tones within the images) of at least one of the one or more image tags to create one or more custom tags (*e.g.*, *see* col. 5, ll. 18-21, for a second rule set defining tags for detecting substantial green content in an image combined with a relative lack of hard edges) for one or more of the image files.

Gao

3. The Gao reference discloses a digital camera having a Uniform Device Descriptor, or eXtensible Markup Language (XML) syntax, a computer language describing the camera's device characteristics, capabilities, features, status, geographic information, and maintenance record. (*See* col. 4, ll. 45-53; col. 7, ll. 57-58.) A Uniform Device Descriptor file attaches to camera image produced, and the file and image travel together across a network from camera to printer (col. 1, ll. 58-60; col. 15, ll. 34-37).

Manolis

4. The Manolis reference discloses a method of storing and accessing photos via a network (col. 3, ll. 24-29).

PRINCIPLES OF LAW

Appellants have the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006).

“To serve as an anticipation when the reference is silent about the asserted inherent characteristic, such gap in the reference may be filled with recourse to extrinsic evidence. Such evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.” *Continental Can Co. USA Inc. v. Monsanto Co.*, 948 F.2d 1264, 1268 (Fed. Cir. 1991).

“[L]imitations are not to be read into the claims from the specification.” *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citing *In re Zletz*, 893 F. 2d 319, 321 (Fed. Cir. 1989)).

ANALYSIS

*Arguments with respect to the rejection
of claims 1, 7 to 10, 16, and 22 to 24
under 35 U.S.C. § 102(e)*

Appellants' first contention is that the Examiner erred in determining that “the recited key ID reads on a ‘number of the image’ in Pavley[]” and “the corresponding recited definition ... reads on Pavley's rule set” (Brief 15, bottom). According to Appellants, “Pavley does not reach the claimed

invention, as the independent claims require that the definition and its corresponding key ID be stored on the server.” (Brief 16, middle).

We disagree with Appellants for the following reasons. We find that Appellants have invented a method, medium, and system of storing a customized tag within photos taken by a camera (FF#1). The claimed method includes storing a key ID and a definition on a server in a network (*id.*). Appellants’ definition, as claimed, is for altering the corresponding first pre-defined function of at least one of the one or more image tags to create one or more custom tags for one or more of the image files (*id.*). The claimed custom tag has a second function that differs from the corresponding first pre-defined function (*id.*). An example of a new function for customs tags, as recited in claim 1, is providing new uses for the tags (*id.*).

In comparison, we find that the Pavley reference teaches storing a category tag (Appellants’ claimed “custom tag”) within photos taken by a camera (FF#2). The patent teaches three types of functions (*i.e.*, an action that occurs based on a category tag): 1) detecting a person or groups of persons according to characteristics, like substantial amounts of flesh tones within the image; 2) detecting nature scenes from characteristics, such as substantial green content in an image combined with a relative lack of hard edges; and 3) detecting categories such as city images, water images, or indoor images (*id.*). Pavley’s method further includes a key ID (*see* Fig. 3, “Image #314”) and a rule set (Appellants’ claimed “definition”) on a server in a network (*id.*). One rule set may be for altering a corresponding first pre-defined function (*e.g.*, *see* col. 5, ll. 15-18, detecting images containing a person or groups of people by recognizing substantial amounts of flesh tones

within the images) of at least one of the one or more image tags to create one or more custom tags (*e.g.*, *see* col. 5, ll. 18-21, for a second rule set defining tags for detecting substantial green content in an image combined with a relative lack of hard edges) for one or more of the image files (*id.*).

A gap in the reference may be filled with recourse to extrinsic evidence. (*See Continental Can Co. USA Inc. v. Monsanto Co.*, cited above) “Such evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.” (*Id.*).

We find that Pavley inherently teaches storing the Image ID #314 of Fig. 3 and the rule set on a server in the Internet web server computer processing system 1102. (*See also* col. 5, ll. 47-49; Fig. 6, element 1104.) Image files are synchronized with “a photosystem environment, i.e., between a digital camera and an externally connected computer system, as represented in Fig. 6.” (*Id.*). The evidence in Pavley makes clear that when Image ID #314 (Appellants’ claimed “key ID”) (*see* Fig. 3; *see also* Fig. 6, element 1104) and the rule set (cited as Appellants’ claimed “definition”) are on the network (*see* col. 6, ll. 27-29), they are inherently stored by the network server. Accordingly, we find no error.

Appellants argue that Pavley does not “disclose a definition ... corresponding to the key ID” as required by the independent claims (Brief 17, middle). “Pavley’s selected rule set is applied to any image processed by its server 1100, regardless of any information included in the image. There is thus no correspondence between the Pavley’s selected rule set and a key ID included in the processed image, as the independent claims require.” (*Id.*).

We find unconvincing Appellants' argument that Pavley fails to teach the claim limitation "a definition ... corresponding to the key ID." (*Id.*). We read "corresponding to" as meaning "stored with." There is no limit in the claims on what "corresponding" means, includes, or represents. We do not read any limitations into claim 1 from the Specification. (*See In re Van Geuns*, cited above.) We note that the Specification discloses the claimed "definition" may be "any actions to be taken by the server, such as performing calculations on the custom tags." (Spec. 9, ll. 15-18.) Pavley's "rule set" is no different from Appellants' claimed "definition" because Pavley's rule set is a routine "for achieving a particular goal for an image file." (Col. 5, ll. 62-63). The "definition" of claim 1 and Pavley's "rule set" are equal since the "actions" of Appellants' "definition" operate the same as the routine of Pavley's rule set. Moreover, Pavley's "Image #314" is the same as Appellants' claimed "key ID" since the term "Image" and number "314" identify Pavley's image. Since the claimed "definition" and the claimed "key ID" are stored together, we find no error in this regard.

Appellants contend that "Pavley does not disclose storing a definition that causes a tag to have a second pre-defined function, as independent claims 1, 10, 16, and 25 require. Instead, Pavley merely describes the conventional altering of values of a file attribute that has a single, fixed, meaning or function." (Brief 18, top).

We disagree. The claimed "custom tag" has a second function (detecting substantial green content in an image combined with a relative lack of hard edges) (FF#2) that differs from the corresponding first pre-defined function (*e.g.*, detecting images containing a person or groups of people by recognizing substantial amounts of flesh tones within the images)

(*id.*). An example of a new function for custom tags, as recited in claim 1, is providing new uses for the tags (FF#1). Pavley teaches the same, in that the new function (*i.e.*, the second function) is detecting substantial green content in an image combined with a relative lack of hard edges (col. 5, ll. 20-21).

Appellants argue that “Pavley fails to disclose altering a first pre-defined function of any of the described attributes or image tags ... as required by the independent claims.” (Brief 18, bottom). According to Appellants, Pavley merely “discloses associating attributes and image tags (*i.e.*, capture information tags, user tags, product tags, and automatic category tags) with an image” and not “altering any of the functions ... of its attributes or image tags.” (*Id.*).

We disagree. We found above that an example of a “first pre-defined function,” as recited in claim 1, is Pavley’s teaching of detecting images containing a person or groups of people by recognizing substantial amounts of flesh tones within the images (FF#2). Accordingly, we find no error.

*Arguments with respect to the rejection
of claims 2 to 6, 11 to 15, 17 to 21, and 25 to 32
under 35 U.S.C. § 103(a) [R2 and R3]*

Appellants argue that the claims cannot be held obvious over Pavley in combination with Gao and Manolis because “Gao and Manolis (either alone or in combination) fail to cure the defect of Pavley for failing to disclose the recited key ID and corresponding definition stored on a server for altering a first pre-defined function of an image tag.” (Brief 20, bottom to 21, top).

Contrary to Appellants' above-stated argument, Pavley does indeed teach "the recited key ID and corresponding definition stored on a server for altering a first pre-defined function of an image tag." (*See supra.*)

Accordingly, we find no error.

Also according to Appellants, "Gao and Manolis (either alone or in combination) also fail to cure the defect of Pavley for failing to disclose altering a first predefined function of an image tag to create a custom tag having a second pre-defined function that is different from the first pre-defined function."

To the contrary, Pavley teaches altering a first predefined function of an image tag to create a custom tag having a second pre-defined function that is different from the first pre-defined function, as claimed. (*See supra.*) Accordingly, we find no error in the Examiner's obviousness rejections [R2 and R3].

CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that the Examiner did not err in rejecting claims 1 to 32.

DECISION

We affirm the Examiner's rejections [R1 to R3] of claims 1 to 32.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

Appeal 2009-004585
Application 09/728,785

peb

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